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shoreside inventory, or by direct purchase for a specific job, the Operator shall include on the invoice, requisition form or other form of transfer memorandum the item number for which the material was used and the contract number covering the work performed.

(5) *Spare parts.* The Operator shall ensure that the invoice covering any Spare Part for an Eligible Vessel which is to be used or installed as an integral, permanent part of the vessel, indicates the specific piece or part of the vessel's hull, machinery, or Equipment for which the Spare Part was obtained.

(6) *Foreign repairs.* Operators receiving M&R subsidy shall submit copies of all U.S. Customs entry forms detailing foreign expenditures on behalf of Eligible Vessels. The copies shall include all expenditures made during the quarter.

(Approved by the Office of Management and Budget under control number 2133-0007)

§ 272.25 Requirements for subsidy repayment.

(a) *Repayment of M&R subsidy for compensated marine or other loss.* If an Operator eventually receives compensation from an insurer or any other person for a marine loss or any other loss for which M&R subsidy has been paid, the Operator shall repay to MARAD an amount equal to the amount of subsidy paid with respect to that loss.

(b) *Repayment of M&R subsidy for Improvements—three year service requirement.* If, within three years after the completion of an Improvement for which M&R subsidy was paid, the Operator permanently withdraws the Eligible Vessel from the ODSA, the Operator shall repay to MARAD an amount equal to the amount of M&R subsidy paid with respect to that Improvement unless MARAD shall have determined that such action was beyond the control of the Operator.

(c) *Repayment of M&R subsidy due to allocation of costs.* If the allocation of total M&R costs required by § 272.41(e) of this part results in the allocation of a lesser amount of subsidizable M&R costs than were actually paid for during the calendar year, the Operator shall repay to MARAD the amount of ODS which was paid in excess of the allocated subsidizable costs.

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(d) *Administrative action.* If an Operator fails to repay an M&R subsidy required to be repaid by this section, MARAD may either reduce any ODS payable by the amount of M&R subsidy required to be repaid by this section, or take any other action necessary to secure repayment.

Subpart D—Penalties

§ 272.31 Determination of penalty.

Operators whose Eligible Vessels have undergone foreign repairs, which MARAD determines are non-emergency in nature, may be subject to a penalty in an amount equal to the total cost (exclusive of applicable U.S. Customs duties) of such foreign repairs and purchases, such penalty to be effected by a deduction from the Operator's total ODS otherwise accrued. The Director, Office of Ship Operating Assistance, shall notify the Operator by letter with respect to:

(a) MARAD's determination of a penalty and the reasons therefore; and

(b) Whether the determination is final or subject to the submission of additional information.

§ 272.32 Mitigation of penalty.

The Director, Office of Ship Operating Assistance, may decide, after a non-emergency foreign repair occurs, to mitigate the penalty. Any mitigation of penalty shall be based on a determination that special circumstances existed at the time of repair. The Director shall not consider the difference in the price of foreign and domestic repair work in making this determination, and shall not grant prior approval of foreign repairs. In determining whether special circumstances existed, the Director shall consider, among others, the following factors:

(a) The trading area of the vessel both before and after the repair was performed;

(b) Loss of revenue and effect on vessel utilization if the vessel had returned to the United States for repairs;

(c) The additional operating expense which would have resulted from a return to the United States to repair the vessel; and

(d) Whether the repairs could have been deferred until return to the

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United States, taking into consideration the Coast Guard requirements for dry docking and special surveys.

§ 272.33 Appeals.

The Operator may appeal final penalty determinations of the Director, Office of Ship Operating Assistance, to the Board, as provided in § 272.43(c) of this part.

Subpart E—Examination, Audit, Review and Appeal Procedures

§ 272.41 Requirements for examination and allocation of M&R expenses.

(a) *Examination requirement.* Pursuant to the specific limitations on M&R subsidy in section 603 of the Act, the Region Office shall examine the expenses submitted by an operator on Form MA-140 in order to determine eligibility to receive M&R subsidy and the reasonableness of such expenses.

(b) *Operator's responsibility.* During the examination, the operator shall provide, at the request of the Director or other official of the Region Office, any further documentation or information necessary to support an M&R expense. If such documentation or information, including information required under paragraph (e) of this section, is not received at the Region Office on a timely basis, the Director or other official of the Region Office may disallow the M&R expense.

(c) *Notification of examination results.* At the completion of the examination the Director or other appropriate official of the applicable Region Office shall notify the Operator by letter of the results of the examination, and shall state the reason for each disallowance of an item claimed for subsidy and/or each nonapproval of a marine loss item.

(d) *Record retention requirements.* To facilitate an audit examination of M&R made pursuant to § 272.42 of this part, the Operator shall maintain files arranged by vessel and voyage, which shall include, at a minimum, a copy of the Region Office notice letter, a copy of the Form MA-140 with all supporting documents submitted therewith, and the condition survey report. The Operator shall retain all the required mate-

rials in files for not less than 3 years after completion of the audit.

(1) *Limitation on approval.* Any approval for payment of M&R subsidy for a marine loss item shall be subject to rescission or modification if the Operator subsequently receives insurance or other compensation for the item. The Region Finance Officer may at any time request verification that the Operator has not received such compensation.

(2) *Status report on approved marine loss items.* The Operator shall advise the Region Finance Office by letter as to whether insurance or other compensation will be recovered for the marine loss item. The Operator is responsible for ensuring that the letter reaches the applicable Region Office within 120 days after:

(i) The date on which all repairs for damage attributed to the "Policy Voyage" (as defined in the Operator's insurance policy) are completed, when the amount for such repairs does not exceed the franchise or deductible of the policy, or

(ii) The date of the underwriter's rejection of the Operator's marine loss insurance claim or claims.

(Reporting and recordkeeping requirements contained in paragraph (d) introductory text were approved by the Office of Management and Budget under control number 2133-0007)

[55 FR 34919, Aug. 27, 1990, as amended at 61 FR 32706, June 25, 1996]

§ 272.42 Audit requirements and procedures.

(a) *Required audit.* In connection with the audit of the Operator's subsidizable expenses, the Office of the Inspector General, Department of Transportation, shall audit for MARAD the Operator's M&R costs, as necessary, for the determination of final subsidy rates. The Operator shall substantiate those costs recorded on the books of account which have been approved by the Administration.

(b) *Notification of audit results.* Upon completion of the audit by the Office of Inspector General, the MARAD Office of Financial Approvals shall notify the Operator of the audit results, including